

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**W.P.(C) No.14116 of 2021**

*Arati Das* ..... *Petitioner*

-versus-

*State of Odisha & Ors.* ..... *Opp. Parties*

***Advocates appeared in the case:***

*For Petitioner* : *Mr. Pradeep Kumar Das 1, Adv.*

-versus-

*For Opp. Parties* : *Mr. Biplab Mohanty, SC*  
*(for S & ME Deptt.)*  
*Mr. Pabitra Kumar Nayak, Adv.*  
*(for O.P.4)*  
*Mr. S.S. Padhy, Adv.*  
*(for O.P.5)*

**CORAM:**

**DR. JUSTICE S.K. PANIGRAHI**

**DATE OF HEARING:-22.09.2022**

**DATE OF JUDGMENT:-23.12.2022**

**Dr. S.K. Panigrahi, J.**

1. The Petitioner through this Writ Petition seeks an appropriate direction against the opposite parties to sanction full and final pension of the petitioner revising the present short,

proportionate provisional pension and pay the arrears dues from 01.02.2011. The petitioner was discharged from her services on 31.01.2011 on superannuation. The petitioner is aggrieved by the rejection of her representation dated 04.11.2020 by the District Education Officer, Sundargarh on 04.12.2020 and praying for a suitable direction for sanction of full and final pension since having rendered 36 years of service and teaching experience and entitled full pension but now paid short proportionate and provisional pension treating her service for only 19 years one month and eight days.

**I. FACTUAL MATRIX OF THE CASE:**

2. Bereft of unnecessary details, the factual matrix of the case in brief is that the petitioner, a widow and is a retired High School Teacher. After completing her Graduation in Arts from Atal Bihari College, Basudevpur she was initially appointed and joined on 16.01.1975 in Girls' High School, Basudevpur which is a recognized and aided Girls High School, then taken over by State Government in the year 1994. She performed her duty as an Asst. Teacher and completed B.Ed. In the year 1979 while in service. She continued her service till 31.12.1988 in the said Girls' High School, Basudevpur in the district of Bhadrak (previously in Balasore District).

3. Consequent upon of her selection to the post of Headmistress in Chhend Housing Colony High School, Rourkela, a private school, she was relieved on 01.01.1989 by the Secretary of the Girls' High School, Basudevpur approved by the then Inspector of Schools, Balasore (Now being District Education Officer, Bhadrak) and thereafter she joined as Headmistress in Chhend Housing Colony High School, Rourkela on 02.01.1989, which was taken over by Rourkela Municipality, Rourkela on 21.12.1991 then taken over by the State Government under School and Mass Education Department from 2004 and she retired on 31.01.2011 at the age of 58 years on superannuation.
4. However, the petitioner was reverted from Headmistress to Asst. Teacher and she was transferred to Panposh High School, Rourkela. Consequently, the petitioner approached this Court in OJC No. 4762/1992 challenging the above reversion order and during pendency of the said Writ Petition, the petitioner was transferred back to Chhend Housing Colony High School on 03.04.1997 as an Asst. Teacher. The writ petition (OJC No.4762/1992) was disposed of on 04.02.2005 on contest with a direction to consider her case for promotion to Headmaster post since she has teaching experience from 1975 and did B.Ed. in the year 1979, whereas the Headmaster in-charge Mr. Jaladhar Rout did B.Ed. in the

year 1984 and to complete the exercise within a period of two months.

5. In the meantime, State Government under School and Mass Education Department took over the Chhend High School from 28.02.2004. On 17.04.2009, Rourkela Municipality requested the State Govt. to comply the order of the High Court of Orissa in OJC No.4762 of 1992 disposed of on 04.02.2005. However, no action in that regard was taken by the State Govt. Subsequently, the petitioner finding no other alternative to get promotion to the post of Headmaster, approached the Orissa State Administrative Tribunal, Cuttack Bench in OA No.2090 (c) of 2010 and after abolition of OAT, the petitioner has filed W.P.(C) No.31318/2020 for transfer the case from OAT to High Court for appropriate relief.
6. Thereafter, the petitioner was superannuated from service on 31.01.2011 wherein she has contended that she has a service period of 36 years (16.01.1975 to 31.01.2011) without interruption, however, she has been granted short, proportionate and provisional pension keeping / treating her service for 19 years one month and eight days (from 23.12.1991 to 31.01.2011), which is a big and substantial loss to her. Hence finding no other alternative, the petitioner has filed this writ petition.

## **II. PETITIONER'S SUBMISSIONS:**

7. Learned counsel for the Petitioner earnestly made the following submissions in support of her contentions:
8. The petitioner was superannuated from service on 31.01.2011 wherein even though she has a service period of 36 years (16.01.1975 to 31.01.2011) without interruption, however, she has been granted short, proportionate and provisional pension keeping / treating her service for 19 years one month and eight days (from 23.12.1991 to 31.01.2011).
9. The service of 12 years 2 months 5 days, at Chhend Housing Colony High School (23.12.1991 to 28.02.2004) under Rourkela Municipality and Government service for 6 years 11 months and 3 days (28.02.2004 to 31.01.2011) after taken over by the State Government under School and Mass Education Department were taken into account for pension. But, past service from 16.01.1975 to 01.01.1989 at Girls' High School Basudevpur and from 02.01.1989 to 22.12.1991 at Chhend Housing Colony High School (14+ 3 = 17 years) were not taken into consideration for grant of full pension. The provisional pension was sanctioned by the State Govt. as per the order of District Education Officer, Sundargarh on 11.12.2013, where her service was counted for 19 years one month and 8 days only.

10. The petitioner on 04.11.2020 gave a representation to District Education Officer, Sundargarh narrating the details to consider her case for full and final pension and filed a writ petition on 23.11.2020 by W.P.(C) No.32325/2020 for a suitable direction to consider her representation dt.04.11.2020. However, the representation of the petitioner dated 04.11.2020 was rejected by the District Education Officer, Sundargarh on 04.12.2020 stating that it was bereft of merit.
11. The petitioner has contended that the rejection order dated 04.12.2020 by the District Education Officer, Sundargarh is illegal, malafide and unjustified.
12. The petitioner has submitted that as per the recommendation of the 6th Central Pay Commission, Government of India revised the pension/ family pension/ gratuity/commutation of pension etc. for Central Government Employees by Notification dated 2<sup>nd</sup> September 2008 of Ministry of Personnel Public Grievances and pensions (Department of Pension and Pensioners Welfare) keeping in view the revisions made by the Government of India, the Government of Orissa, Finance Department resolved in their Resolution No. Pen-181/08-3653/F Dated 19<sup>th</sup> January, 2009 in Paragraph No. 2 revised the provision of qualifying service from 33 years to 25 years in Rule 47 (2) (a) and (b) of Orissa Civil Service (Pension) Rules, 1992.

13. Moreover, the past service in an aided High School i.e. Girls' High School, Basudevpur from 16.01.1975 to 01.01.1989 and service in Chhend Housing Colony High School from 02.01.1989 to 23.01.1991 has not been considered while pension papers were prepared by the District Education Officer, Sundargarh following the procedure for grant of pension laid down in Rules-11(3), 57, 58, 59 and 60 of Odisha Civil Service (Pension) Rules, 1992.
14. Additionally, the Resolution No. 1395 dated 16.01.2009 by the Department of School and Mass Education in consultation and concurred in the Finance Department resolved that the qualifying service for pension would be counted for the period of service rendered by taking together the period prior to taking over of the school and the subsequent service rendered by the employees after being taken over.

### **III. SUBMISSIONS BY OPPOSITE PARTY NO.3:**

15. Per *contra*, learned counsel for the Opp. party intently made the following submissions:
16. It was submitted by the Opp. Party No.3 that the authorities of the Government while sanctioning the pensionary benefit in favour of the petitioner have duly taken into consideration the petitioner's service rendered under the Municipality fold and as well as the service rendered under the Government in the Department of School and Mass Education. Upon due

consideration of the service period rendered by the petitioner from the date of her fixation of regular Trained Graduate scale of pay i.e 01.10.1992, the authorities have treated the service period rendered by the petitioner with effect from 01.10.1992 till she was superannuated from her service on 31.1.2011. During the service period the period rendered by the petitioner under the fold of Municipality authority was duly taken into account by the authorities of the Government while sanctioning pension and pensionary benefits in favour of the petitioner. Accordingly, the pension has been sanctioned and the petitioner has regularly getting her pension. The claim as has been made in this Writ Petition to treat the period of service from 16.01.1975 to 01.01.1989 i.e the period of service rendered by the petitioner under Girls' High School of Basudevpur and from 02.01.1989 to 22.12.1991 the period served when Chhend Housing Colony High School cannot be taken into consideration as qualifying service in view of the fact that the petitioner was serving as an Assistant Teacher under Basudevpur Girls' High School from 16.01.1975 to 01.01.1989.

17. It was further submitted that the Government in H & U.D Department while passing the resolution for taking over management of primary and lower secondary and secondary schools have formulated certain guidelines with regard to the

service conditions of the employees those who were continuing under H & U.D Department. While formulating certain guidelines as per the provisions enumerated under such resolution, it was specifically mentioned with regard to pensionary benefits, the pensionary benefit and all other retirement benefit State Government employees shall be applicable/ admissible to such teaching or non-teaching staffs, who are under pensionable establishment, posted against the sanctioned post and are enjoying scale of pay and taken over under the said Resolution. It was further enumerated under the said guidelines that the period of service rendered under the ULB organization will be regulated by the Municipality pension rules and the subsequent Government period will be governed by OCS (Pension) Rules, 1992. It is pertinent to mention here that on a close scrutiny of the service career of the petitioner, it is apparently clear that the petitioner was favoured with trained graduate scale of pay i.e the regular scale of pay only with effect from 01.10.1992. Keeping in view the relevant date on which the petitioner was extended the regular scale of pay such as Trained Graduate scale of pay, that day was treated as a material date for the purpose of computing qualifying service for the pensionary benefit of the petitioner and as per the prescribed guidelines, the petitioner was extended the pensionary benefit strictly in accordance

with the norms and guidelines provided under the Resolution of the Government as has been discussed in the preceding paragraphs.

18. The petitioner prior to filing of this writ petition has approached the DEO, Sundargarh by way of representation dated 04.11.2020 for redressal of her grievances. The then DEO, Sundargarh upon due consideration of the grievances of the petitioner found that the petitioner rendered her service under the Urban Local Bodies from 23.12.1991 to 27.2.2004 i.e. 12 years 2 months 5 days and under the S & M.E Department from 28.2.2004 to 31.1.2011 i.e. 6 years 1 month 3 days. In total the petitioner has served for a period of 19 years 1 month and 8 days. Keeping in view the aforesaid period of service rendered by the petitioner, the said DEO, Sundargarh while dealing with the grievances of the petitioner categorically found that the petitioner has served for a period of 19 years 1 month 8 days of her service, as such she is not eligible for full pension. Accordingly, her final pension paper has been submitted by the Headmaster of Chhend Housing Colony High School vide letter No.203 dated 16.12.2014 to the Office of the DEO, Sundargarh and the official of the DEO, Sundargarh upon due calculation of pension and DCRG taking into account her service rendered under ULB and under the Government submitted the papers for grant of final

pension in favour of the petitioner before the Controller of Accounts vide letter No.3269 dated 23.03.2003. The Controller of Accounts after considering the case of the petitioner for grant of pension from its proper prospective have finalized the pension and issued PPO and GPO in favour of the petitioner for grant of final pension with effect from 01.02.2011.

19. The then DEO, Sundargarh upon consideration of the representation of the petitioner found that the grievance with regard to grant of full pension in favour of the petitioner merits no consideration and rejected the same vide his office order dated 04.12.2020, which is impugned in this writ petition. On a close reading of the office order passed by the DEO, Sundargarh dated 04.12.2021, it is apparently clear that there is absolutely no illegality nor there is any irregularity committed at the instance of the then DEO, Sundargarh which rejecting the grievance of the petitioner so as to invoke the extraordinary jurisdiction of this Hon'ble Court.

#### **IV. COURT'S ANALYSIS AND REASONING:**

20. It is well-settled that salaries and pensions are due as a matter of right to employees, and, as the case maybe, to former employees who have served the State. Since, the petitioner rendered her services till superannuation as a Government servant, her entitlement to the payment of salary is intrinsic to

the right to life under Article 21 and to right to property which is recognized by Article 300A of the Constitution. Similar sentiments have been expressed by the Apex Court in catena of judgments.

21. The Supreme Court in the case of *State of Andhra Pradesh & Anr v. Smt. Dinavahi Lakshmi Kameswari*<sup>1</sup> observed that

*"The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State."*

22. In *State of Kerala and others vs. V. Padmanabhan Nair*<sup>2</sup>, the Supreme Court held that prompt payment of retirement benefits is the duty of the Government and any failure in that direction will entail the Government liable to pay penal interest to the government servant. It was further held that gratuity should be paid on the date of retirement or on the following day and pension should be paid at the expiry of the following month. The relevant paragraphs are as follows:

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<sup>1</sup> Civil Appeal No. 399 of 2021 (Supreme Court)

<sup>2</sup> (1985) 1 SCC 429

*“The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the respondent who retired on 19.5.1973. His pension and gratuity were ultimately paid to him on 14.8.1975, i.e., more than two years and 3 months after his retirement and hence after serving lawyer’s notice he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The appellants put the blame on the respondent for delayed payment on the ground that he had not produced the requisite LP.C. (last pay certificate) from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 186, the High Court held-and in our view rightly-that a duty was cast on the treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any justification nor explanation had been given. The claim for interest was, therefore, rightly, decreed in respondent’s favour.*

*Unfortunately, such claim for interest that was allowed in respondent’s favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it could not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant.”*

23. In *Dr.Uma Agarwal v. State of U.P.*<sup>3</sup>, the Supreme Court held that:

*"We have referred in sufficient detail to the Rules and instructions which prescribe the time- schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps atleast two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."*

24. However, it is well established by law that while allowing the pensionary benefits, the same has to be in compliance with the rules of the state. The matter of concern in the present case is whether the past service of the petitioner from 16.01.1975 to

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<sup>3</sup> (1999) 3 SCC 438.

01.01.1989 at Girls' High School Basudevpur and from 02.01.1989 to 22.12.1991 at Chhend Housing Colony High School (14+ 3 = 17 years) should be taken into consideration for grant of full pension.

25. Opposite Party No.3 has contended that while taking over the aforesaid school, the H & UD Department had provided in the guidelines that the pensionary benefit and all other retirement benefit State Government employees shall be applicable/ admissible to such teaching or non-teaching staffs, who are under pensionable establishment. Further, they are required to be posted against the sanctioned post, need to enjoy the scale of pay and are taken over under the said Resolution. And in that regard, it was submitted that the petitioner was favoured with trained graduate scale of pay i.e the regular scale of pay only with effect from 01.10.1992. Therefore, the past service period from 16.01.1975 to 01.01.1989 at Girls' High School Basudevpur and from 02.01.1989 to 22.12.1991 at Chhend Housing Colony High School should not be taken into consideration.
26. As submitted by the petitioner, it is pertinent to note that the Resolution No.1395 dated 16.01.2009 by the Department of School and Mass Education in consultation and concurred in the Finance Department resolved that the qualifying service for pension would be counted for the period of service

rendered by taking together the period prior to taking over of the school and the subsequent service rendered by the employees after being taken over. Additionally, this Court is not hesitant to rely on the submission of the petitioner that the Government of Orissa, Finance Department resolved in their Resolution No. Pen-181/08-3653/F dated 19<sup>th</sup> January, 2009 in Paragraph No. 2 revised the provision of qualifying service from 33 years to 25 years in Rule 47 (2) (a) and (b) of Orissa Civil Service (Pension) Rules, 1992. The Court would like to iterate that the Resolutions mentioned hereinabove shall be applicable in the present case and shall supercede the guidelines issued by the H & UD Department in relation to taking over the schools.

27. Summing up, it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in

consideration of past service or a surrender of rights or emoluments to one retired from service. Thus, the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical *raison d'etre* for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.

28. The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process and accordingly it should receive a liberal construction and the courts may not so interpret such statute as to render them inane.
29. In light of the aforesaid discussion and having regard to the present position of law, this Court is of the opinion that the rejection order dated 04.12.2020 by the District Education Officer, Sundargarh should be quashed. The Opposite Party No.3 is hereby directed to pay the pensionary amount to the petitioner after taking into consideration the past service of the petitioner i.e. period of 19 years 1 month 8 days. The said pension shall be released within a period of three months from today.

30. Accordingly, this Writ Petition is disposed of. No order as to cost.

*( Dr. S.K. Panigrahi )*  
*Judge*

*Orissa High Court, Cuttack,*  
*Dated the 23<sup>rd</sup> Dec. 2022/B. Jhankar*

